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on the Elimination
of all Forms of
Racial Discrimination

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Forty-ninth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES
PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Concluding observations of the Committee on
the Elimination of Racial Discrimination

India 1/

1. At its 1161st, 1162nd and 1163rd meetings, held on 7 and 8 August 1996 (see CERD/C/SR.1161-1163), the Committee on the Elimination of Racial Discrimination considered the tenth to fourteenth periodic reports of India (CERD/C/299/Add.3) and adopted, at its 1182nd meeting, held on 22 August 1996, the following concluding observations.

A. Introduction

2. The Committee expresses its appreciation for the opportunity to resume its dialogue with the State party on the basis of its tenth to fourteenth periodic reports. It regrets the brevity of the report, all the more so since 10 years have passed since the previous report was submitted. It also regrets that the report does not provide concrete information on the implementation of the Convention in practice; it furthermore regrets that the report and the delegation claim that the situation of the scheduled castes and scheduled tribes does not fall within the scope of the Convention.

1/ The comments of the Government of India were submitted to the Committee on the Elimination of Racial Discrimination pursuant to article 9, paragraph 2, of the Convention and are reprinted in annex IX to the annual report of the Committee (A/51/18).

3. The Committee notes that the State party has not made the declaration provided for in article 14 of the Convention. Some of the members of the Committee requested that the possibility of making such a declaration be considered.

B. Factors and difficulties impeding the implementation of the Convention

4. It is noted that India is a large multi-ethnic and multicultural society. It is also noted that the extreme poverty of certain groups in the population, the system of castes and the climate of violence in certain parts of the country are among the factors which impede the full implementation of the Convention by the State party.

C. Positive aspects

5. The leading role played by India in the struggle against racial discrimination and apartheid at the international level is welcomed by the Committee. The Committee also acknowledges the far-reaching measures adopted by the Government to combat discrimination against members of scheduled castes and scheduled tribes.

6. The demographic data on the composition of the population and on the representation of various communities in the public service at the central and state level of government provided by the delegation during the meetings are welcomed.

7. The broad functions and powers of the recently established National Commission on Human Rights, as defined by the Protection of Human Rights Act (1993), which include the capacity to inquire into complaints of violations of human rights, to intervene in any proceeding involving allegations of violation of human rights pending before a court, to review constitutional and legal safeguards, to study treaties and other international instruments on human rights, to recommend measures for their effective implementation and to spread human rights literacy among the population, are welcomed by the Committee. It is noted with interest that the Commission encourages the states within the federation to create human rights commissions, as well as tribunals dealing specifically with human rights.

8. The Committee takes note of the plurality of newspapers and the mass media, and their awareness of human rights problems. The Committee holds that they play an important role in the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination.

9. Note is also taken of the procedure of public interest litigation adopted by the Supreme Court, which affords the possibility to anyone, and not only to the victims of human rights violations, to seek redress from the court by any means, even by means of a postcard.

10. Articles 15 (i) and 15 (ii) of the Constitution of India, prohibiting all forms of discrimination by the State and its agents, or between individuals, including discrimination based on race and castes, as well as article 153, paragraphs (a) and (b), and article 505 of the Penal Code, which prohibit

actions that promote disharmony, hatred, feelings of enmity and ill-will on grounds of race or religion, are found to be mainly in conformity with article 2, paragraph 1, of the Convention.

11. The Committee welcomes the statement in the State party's report to the effect that no organization which promotes and incites racial discrimination can legally exist in India and that the Constitution and the laws in this regard make it clear that the State party will take all necessary measures within the law to prevent activities and propaganda which promote and incite racial discrimination.

12. The lapse of the Terrorist and Disruptive Activities (Prevention) Act (TADA), which applied in parts of the north-eastern part of the country and in Jammu and Kashmir, under which the right to personal security of some members of ethnic and religious minorities living in those areas was often reported to be violated by security forces, is welcomed.

13. The importance accorded by the authorities to education as a means to spread awareness of human rights and literacy among the population and to struggle against all forms of discrimination, in particular racial discrimination, as well as the activities of the National Commission on Human Rights and the inclusion of human rights in the training of law enforcement officials, are welcomed.

D. Principal subjects of concern

14. Noting the declaration in paragraph 7 of the report, reiterated in the oral presentation, the Committee states that the term "descent" mentioned in article 1 of the Convention does not solely refer to race. The Committee affirms that the situation of the scheduled castes and scheduled tribes falls within the scope of the Convention. It emphasizes its great concern that within the discussion of the report, there was no inclination on the side of the State party to reconsider its position.

15. The Committee is seriously concerned that the Kashmiris, as well as other groups, are frequently treated, on account of their ethnic or national origin, in ways contrary to the basic provisions of the Convention.

16. Clause 19 of the Protection of Human Rights Act prevents the National Commission on Human Rights from directly investigating allegations of abuse involving the armed forces. This is a too broad restriction on its powers and contributes to a climate of impunity for members of the armed forces. Moreover, it is regretted that the Commission is debarred from investigating cases of human rights violation that occurred more than a year before the making of the complaint.

17. The absence of information on the functions, powers and activities of the National Commission on Scheduled Castes and Scheduled Tribes and of the National Commission on Minorities makes it impossible to assess whether these Commissions have a positive impact upon the enjoyment of human rights and fundamental freedoms by members of the groups in question.

18. It is regretted that no information has been provided to the Committee on the effective implementation of the penal provisions referred to in paragraph 10 above. In this regard, concern is expressed at numerous reports of acts of discrimination based on race, colour, descent or national or ethnic origin, although it was stated that no such case has yet been brought before the courts; this leads the Committee to wonder whether individuals are sufficiently informed about their rights.

19. The lack of concrete information on the legal provisions in force to prohibit organizations which incite and promote racial discrimination and hatred, and to punish members of such organizations in accordance with article 4 of the Convention, as well as on their application in practice, including eventual court decisions, is regretted. This is most serious in view of widespread violence against certain minorities actively sponsored by extremist organizations that have not been declared illegal.

20. The lack of information on the text of the Directive Principles of State Policy of the Constitution relating to the promotion of social, economic and cultural rights, and on measures to give them effect, makes any evaluation of the implementation of article 5 of the Convention more difficult.

21. Regrets are expressed that the National Security Act and, in some areas of India, the Public Safety Act, remain in force.

22. It is noted with concern that the denial of the equal enjoyment of political rights, as provided for in article 5 (c) of the Convention, has led to an increase of violence, in particular in Jammu and Kashmir.

23. It is noted that although constitutional provisions and legal texts exist to abolish untouchability and to protect the members of the scheduled castes and tribes, and although social and educational policies have been adopted to improve the situation of members of scheduled castes and tribes and to protect them from abuses, widespread discrimination against them and the relative impunity of those who abuse them point to the limited effect of these measures. The Committee is particularly concerned at reports that people belonging to the scheduled castes and tribes are often prevented from using public wells or from entering cafés or restaurants and that their children are sometimes separated from other children in schools, in violation of article 5 (f) of the Convention.

24. The Committee regrets that certain communities do not enjoy representation in proportion to their size.

25. Although it is noted that the Supreme Court and the high courts have the jurisdiction to award compensation to victims of human rights violations, including in the field of racial discrimination, concern is expressed that there exists no specific statute providing for the right of individuals to seek from the courts just and adequate reparation or satisfaction for any damage suffered as a result of acts of racial discrimination, as required by article 6 of the Convention.

E. Suggestions and recommendations

26. The Committee recommends that the State party continue and strengthen its efforts to improve the effectiveness of measures aimed at guaranteeing to all groups of the population, and especially to the members of the scheduled castes and scheduled tribes, the full enjoyment of their civil, cultural, economic, political and social rights, as mentioned in article 5 of the Convention. In this regard, the Committee recommends that the next report to be submitted by the State party contain full and detailed information on the legislative aspects and the concrete implementation of the Directive Principles of the State Policy of the Constitution.

27. The Committee recommends that special measures be taken by the authorities to prevent acts of discrimination towards persons belonging to the scheduled castes and scheduled tribes, and, in cases where such acts have been committed, to conduct thorough investigations, to punish those found responsible and to provide just and adequate reparation to the victims. In this regard, the Committee particularly stresses the importance of the equal enjoyment by members of these groups of the rights to access to health care, education, work and public places and services, including wells, cafés or restaurants.

28. The Committee recommends that clause 19 of the Protection of Human Rights Act be repealed to allow inquiries of alleged abuses committed by members of the armed and security forces to be conducted by the National Commission on Human Rights and that the Commission be enabled to look into complaints of acts of racial discrimination that occurred more than a year before the filing of the complaint.

29. The Committee recommends that the next periodic report of the State party include information on the powers and functions, as well as on their effective implementation, of the National Commission on Scheduled Castes and Scheduled Tribes and of the National Commission on Minorities.

30. The Committee also recommends that the Government provide in its next periodic report information, including the number of complaints lodged and sentences passed, about the implementation in practice of the legal provisions prohibiting acts of racial discrimination and organizations which promote and incite racial discrimination, in accordance with articles 2 and 4 of the Convention.

31. The Committee recommends a continuing campaign to educate the Indian population on human rights, in line with the Constitution of India and with universal human rights instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination. This should be aimed at eliminating the institutionalized thinking of the high-caste and low-caste mentality.

32. The Committee reaffirms that the provisions of article 6 of the Convention are mandatory and that the Government of India should adopt legal provisions making it easier for individuals to seek from the courts just and

adequate reparation or satisfaction for any damage suffered as a result of acts of racial discrimination, including acts of discrimination based on belonging to a caste or a tribe.

33. The Committee suggests that the State party ensure wide publicity, as far as possible in the official and state languages, to its tenth to fourteenth reports and to the present concluding observations.

34. The Committee recommends that the State party ratify at its earliest convenience the amendments to article 8, paragraph 6, of the Convention, adopted by the fourteenth meeting of States parties.

35. The Committee recommends that the State party's next periodic report, due on 4 January 1998, be a comprehensive report and that it address all the points raised in these concluding observations.